

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13343 of John Vassilas, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a tailor and dry cleaning agency to a carry-out in an SP-2 District at the premises 1251 20th Street, N.W., (Square 116, Lots 59 and 60).

HEARING DATE: September 24, 1980
DECISION DATE: October 1, 1980

FINDINGS OF FACT:

1. The subject property is located at the southeast corner of the intersection of N and 20th Streets and is known as 1251 20th Street, N.W. It is in an SP-2 District.

2. The subject site is rectangular in shape. It measures 43.50 feet in depth and 34.67 feet in width. The site is improved with a one story building that is used as a food carry-out business known as the Kozy Korner Carry-Out. Its entrance is from 20th Street, N.W. There is no entrance or exit on N Street.

3. The applicant is also the owner of the adjoining property at 1253 20th Street which is known as the Cozy Corner Restaurant. The applicant has his residence above the restaurant. Entrance and exit from the restaurant is from 20th Street.

4. The applicant has a Certificate of Occupancy for a restaurant/delicatessen at the 1253 20th Street address. There is no Certificate of Occupancy for the subject carry-out at 1251 20th Street. The last Certificate of Occupancy issued for the subject property was issued June 21, 1979 for its use as a tailor and dry cleaning agency.

5. The applicant purchased both buildings at the same time and treated them as one since there were two doors connecting both premises. The applicant moved his delicatessen facility from the restaurant and created the subject carry out next door. The applicant testified that he believed he could function legally under the one Certificate of Occupancy which was for a restaurant/delicatessen.

6. On May 23, 1980 the applicant was advised by the Zoning Inspection Branch that he was in violation in the use of the subject premises without a Certificate of Occupancy. On July 16, 1980 the applicant filed the subject application with the BZA.

13. There were no complaints of record as to the conduct and maintenance of the carry-out.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant has complied with the requirements of Sub-section 7104.2. Both uses are C-1 uses. The subject use is a neighborhood facility. The record is devoid of any complaints registered against the subject carry-out as to the manner in which it conducts its business or maintains the property. The Board further concludes that the relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0 (Theodore F. Mariani, William F. McIntosh, Connie Fortune and Leonard L. McCants to grant, Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
EXECUTIVE DIRECTOR

FINAL DATE OF ORDER: 11 DEC 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OR PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

7. Adjacent to the subject carry-out going south toward a C-3-C District is Georgios Pizza Carry-Out, office buildings and retail stores. Across the street in a southerly direction is the Embassy Square Apartment house, the Provencal restaurant, a post office, a tavern and a liquor store.

8. The subject carry-out, as stated before originated in the Cozy Corner Restaurant. With the construction of the many office buildings in the neighborhood the clientele increased. There was need for more space and new quarters for the carry-out. The bulk of the business is at lunch time. The customers walk to the carry-out. The business closes at 4:00 p.m.

9. Both the tailor and dry cleaning agency and the carry-out are uses permitted in the C-1 District.

10. The Dupont Circle Citizens Association opposed the application on the grounds that such a commercial use is an intrusion into the SP-2 District and that the subject property with premises 1253 could be restored to housing facilities.

11. Advisory Neighborhood Commission-2B opposed the application. In its report dated September 24, 1980 the ANC reported that it believed the carry-out shop to be incompatible with the special purpose zone and more suitable to a commercial zone. Already, directly to the north of the subject premises is a restaurant and to the south, another carry out. Pursuant to Sec. 8207.2, special exceptions must be in harmony with the general purpose and intent of the zoning regulations and should not adversely affect neighboring properties. A residential use is directly opposite the carry out and another, the Sunderland Condominium is just north. Furthermore, as of May 23, 1980 the Zoning Administrator found the owners not to be in compliance with Section 8104.1 of the regulations which notes no person shall use any structure, land or part thereof for any purpose (other than a one-family dwelling) until a certificate of occupancy has been issued to such person stating that such use complies with the Zoning Regulations.

12. The Board is required by statute to give weight to the issues and concerns of the ANC. In addressing these concerns, as well as those of the DCCA, the Board finds that the applicant is seeking a special exception. To grant the special exception the applicant must meet the requirements of Sub-section 7104.2 of the Zoning Regulations. The applicant is not required to establish that the subject property cannot be used for housing. The subject property has a valid Certificate of Occupancy for a tailor and dry cleaning agency. The applicant seeks to change one legal non-conforming use to another. As found in Finding No. 7 there are commercial uses surrounding the subject site and they lead into a C-3-C District and away from the SP-2 District. As to the applicant operating without a Certificate of Occupancy the Board based on Finding No. 5 deems this an honest mistake.